IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1737 OF 2007

Special Recovery Officer & Anr. ....Petitioners
V/s.
Uttam M. Chougale & Ors. ....Respondents

Mr.Surel S. Shah for the Petitioners.

Mr.Shivajirao A. Masal for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 27TH JULY, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. The impugned order sets aside an attachment of a sum of Rs.5000/- from the salary of Respondent No.1 issued by the Special Recovery Officer - Petitioner No.1. There is no dispute that the principal debtor is liable to Petitioner No.2 - Mahesh Urban Co-operative Bank Ltd. to the extent of Rs.2,89,000/-. Respondent No.1 is the guarantor. It is a little difficult to understand the basis on which the order of Petitioner No.1 was set aside by the Divisional Joint Registrar, Co-opeative Societies, Pune in the Revision Application filed by Respondent No.1. The Divisional Joint Registrar has held that

the procedure under Section 60 of the C.P.C. was not followed. In that event at the highest, the Divisional Joint Registrar ought to have remanded the matter.

3. I do not see any purpose in remanding the matter. The only defence taken by Respondent No.1 is that Respondent No.1 is a guarantor and that the Petitioners have not taken any steps against the principal debtor. This is not a valid defence at all. On behalf of the Petitioner, it was submitted that the principal debtor is a habitual defaulter and is absconding. In any event, it is not obligatory on the creditor to first take action against the principal debtor.

4. I repeatedly enquired with Respondent No.1 whether under the provisions of Section 60 of the C.P.C., Respondent No.1 was entitled to any deductions which would bring the amounts liable to be attached below Rs.5000/-. He was unable to make any submission in this regard. At the very least the income of Respondent No.1 would be Rs.25,000/-. In that event even after allowing for the statutory deductions of Rs.1000/- and the 2/3rd of the remaining amount, the amounts liable to be attached would be more than

Rs.5000/- per month.

5. In the circumstances, Rule is made absolute in terms of prayer (c). There shall be no order as to costs.